

FCC MAIL SECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

FCC 99M-80
 90816

DEC 2 2 08 PM '99

In re Applications of)	MM DOCKET NO. 99-153
DISPATCHED BY)	
READING BROADCASTING, INC.)	File No. BRCT-940407KF
)	
For Renewal of License of)	
Station WTVE(TV), Channel 51)	
Reading, Pennsylvania)	
)	
and)	
)	
ADAMS COMMUNICATIONS CORPORATION)	File No. BPCT-940630KG
)	
For Construction Permit for a New)	
Television Station to Operate on)	
Channel 51, Reading, Pennsylvania)	

O R D E R

Issued: November 24, 1999 ; Released: November 26, 1999

This is a ruling on Motion to Suspend Procedural Dates that was filed by Reading Broadcasting, Inc. ("Reading") on November 22, 1999. The questions raised by Reading were addressed at a Prehearing Conference that was held on November 23, 1999, attended by counsel for Reading, counsel for Adams Communications Corporation ("Adams") and counsel for the Chief of the Enforcement Bureau ("Bureau"). Counsel for the Bureau and counsel for Adams waived the filing of Oppositions on-the-record.

On November 2, 1999, Reading filed a Motion to Dismiss Adams' Application, or Alternatively, to Enlarge Issues (Abuse of Process). The Bureau filed a Comment on November 19, 1999, in which it represented that "absent an adequate rebuttal from Adams" the Bureau would support the adding of an abuse of process issue against Adams. Adams filed its Opposition on November 22, 1999, and Reply pleadings shall be filed on December 1, 1999. Order FCC 99M-79 (scheduling order).

In the context of Reading's Motion, which if granted could be dispositive of the case, Reading argued that there were equities which warrant the cessation of pending and scheduled discovery and litigation on all other issues, including the renewal comparative issue set for January 6, 2000, in order to focus exclusively on the potential dismissal/abuse of process issues. Reading urged a difference as to the misrepresentation/lack of candor issues now pending against Reading which also could be dispositive. According to the argument advanced by Reading's counsel, because the misrepresentation/candor issues were based on the disclosures of Micheal Parker, relief could be crafted that would remove Mr. Parker from Reading and Reading could

operate on a short-term renewal. The defining distinction was the fact that the Parker disclosures (attributable to Reading) were acts of past, completed conduct that are not continuing. Contrariwise, an abuse of process (not yet determined to merit an issue) is ongoing by its nature and can only be alleviated by dismissal.

In response to the Bureau's efficiency argument (the Commission requires that all issues be initially decided before the case is taken on exceptions), Reading pointed out that there are substantial hardships and expenses of litigation, low employee morale, and problems of uncertainty imposed if the litigation is allowed to continue before addressing the question of the bona fides of Adams' application and its basic qualification to proceed as a challenger. In opposition to Reading's arguments, counsel for Adams, noting that the issues are only now under consideration, argued that the question of wholesale suspension of issues which were set by the Commission and added by the Presiding Judge was an unprecedented request that should be rejected.¹

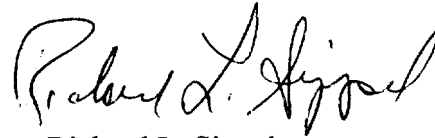
The arguments were heard and considered. While Reading has understandable concerns about expense, inconvenience and uncertainty, those are unintended and unavoidable consequences of this kind of litigation. The Commission's policy is to have all issues initially decided so that all exceptions can be addressed by the Commission at the same time. See RKO General, Inc. (WOR-TV), 61 F.C.C. 2d 1062, 1063-64, Paras. 4-5 (1976) (a bifurcated hearing should not be undertaken by a presiding judge without Commission authorization). Even if Reading were to succeed in having the issues added and obtained favorable initial findings and conclusions from the undersigned and a favorable decision at the Commission, Adams could be expected to appeal to the Court of Appeals and after the delay on appeal, the case could be returned thereby requiring the parties to virtually start over again. That scenario seems at least as ominous as the one facing Reading now.

Based on the foregoing, it is concluded that Reading's good faith Motion to Suspend Procedural Dates cannot be granted.

¹ Cf. WWOR-TV, Inc., 7 F.C.C. Red 636, 643-44, Paras. 56-61 (bifurcation of proceeding). In that case, a settlement was presented to the presiding judge before the comparative case was heard. An abuse of process issue was added and heard in the context of the proposed settlement which was the event that halted the taking of evidence on the comparative issue. The Commission held that under the unique circumstances of that case that resulted in dismissal there was no need to hear comparative evidence. Id. The procedural posture of that case was entirely different from this case in its present posture. It is not precedent for adopting the procedure advocated by Reading.

Accordingly, the Motion to Suspend Procedural Dates filed by Reading Broadcasting, Inc. on November 22, 1999, IS DENIED.²

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Richard L. Sippel". The signature is fluid and cursive, with the first name "Richard" and last name "Sippel" clearly distinguishable.

Richard L. Sippel
Administrative Law Judge

² Copies of this Order were e-mailed to counsel on the date of issuance.